

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA,

Plaintiff,

:

Case No. 3:08-cr-175  
also 3:11-cv-299

-vs-

District Judge Thomas M. Rose  
Magistrate Judge Michael R. Merz

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JEREMY E. LEWIS,

Defendant.

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**DECISION AND ORDER DENYING SECOND MOTION FOR LEAVE TO AMEND**

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This case is before the Court on Defendant's Defendant's Second Motion for Leave to Amend his Motion to Vacate under 28 U.S.C. § 2255 (Doc. No. 147). A motion to amend is a non-dispositive pretrial motion which a magistrate judge has authority to decide.

As Defendant admits, he learned no later than August 2010 that his attorney had not filed a notice of appeal on his behalf. The Motion for Leave to Amend was not filed under January 11, 2012. The new claim is therefore barred by the one-year statute of limitations in § 2255 and granting the Motion would be futile because the amended motion would be subject to dismissal on timeliness grounds. Therefore the Motion is DENIED.

January 11, 2012.

s/ **Michael R. Merz**  
United States Magistrate Judge